



CONSUMER ADVOCATES AND UTILITY REGULATION: A 50 STATES SURVEY

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INTRODUCTION

The regulation of public utilities at the state level most often relies on three distinct groups. The policy makers, utility commissions, and the consumer advocate. As stakeholder groups and policy issues grow in complexity and diversity the role of governmental proxy consumer representatives, often referred to as consumer counsel or advocates, in administrative hearings takes on ever more nuanced roles.

Governmental consumer advocates serve to represent the monopoly utility customers' interest in rate cases and administrative hearings. Although the end goal of these offices is often similar, there are several different approaches to structuring an office of consumer counsel. The main differences lie in the institutional affiliation of the office, the consumer advocate's authority, and the interests that the office represents.

Where will you find them?

The location of a consumer advocate's office in the web of state government can have some bearing on its advocacy approach. As noted in Table 1 there are several iterations of advocacy staffs:

1. The independent office;
2. Divisions within states Attorneys' General offices;
3. Public boards; and
4. Offices within public service commissions.

More than a quarter of the states listed in Table 1 have independent consumer counsel offices. Of those two, Montana and Florida are located within the legislative branch. Seventeen states have, to some extent, utility consumer advocate offices within their state's office of the Attorney General. Five states have some form of advocacy board.

Despite the differing locations of consumer advocate offices, the end goal appears similar.

What do they do?

Consumer advocates protect the public interest by intervening in rate cases and other docket issues at the public service commission in their respective state. States differ on the office's authority to appear before state and federal courts and other agencies such as FERC and the FCC. Most consumer advocates have the authority to appeal commission decisions to the courts.

Who do they serve?

Consumer advocates in most states represent all utility customers, but 10 states limit their consumer advocate to representing all or a combination of residential, agricultural, or small business customers.

STATE CASE STUDIES

Independent offices: Montana

Of the states in Table 1, 27 are represented by independent consumer advocate offices.

The Montana Consumer Counsel provides an example of an independent consumer advocacy staff. The Counsel office is independent and housed within the legislative branch. The office is constitutionally founded, and the Consumer Counsel is appointed by the Legislative Consumer Committee.

Counsel and staff participate in the appropriate proceedings before the Montana Public Service Commission, Federal Energy Regulatory Commission (FERC), Federal Communications Commission (FCC), and federal courts and agencies.¹

The Attorneys General: Washington

Washington is one of 17 states with some form of utility consumer involvement in the Office of Attorney General.

The Washington Office of the Attorney General Public Counsel Section represents customers of state-regulated, investor-owned utilities before the Washington Utilities and Transportation Commission (WUTC). The unit is also authorized to participate in water, transportation and pipeline issues.

The Public Counsel Unit represents residential and small business customers of state-regulated electric, natural gas, and telecommunications utilities operating in Washington. Public Counsel does not participate in matters involving publicly-owned utilities, such as Seattle City Light or the Snohomish Public Utility District. It represents residential and small-business classes and is not staffed to respond to individual complaints.²

In-House Advocacy Staff: Wyoming

Five states provide for advocacy staff within the Public Service Commission organization. States exhibit differing degrees of detachment from administration within the commission structure.

Wyoming is one example of a firewalled advocacy staff. The Wyoming Office of the Consumer Advocate (OCA) is an independent division within the Wyoming Public Service Commission created in March 2003. The OCA represents Wyoming citizens and all classes of utility customers in matters involving public utilities. The office is housed within, but not administratively tied to the commission.

The Administrator is appointed by and reports to the Governor. The OCA's other five employees are hired by and report to the OCA's Administrator. The technical experience of the staff includes legal, economic, and accounting expertise.

¹ Montana Consumer Counsel

<https://leg.mt.gov/content/Committees/Administration/Consumer%20Counsel/MCCGoalsandObjectives.pdf>

² Washington Office of the Attorney General

<https://www.atg.wa.gov/about-public-counsel>

Consumer Boards: Kansas

Consumer boards represent another advocacy option. The Kansas Corporation Commission (KCC) established the Kansas Consumer Utilities Ratepayer Board in 1988 to serve as the state's consumer advocate. The CURB is separate from the KCC for budgetary purposes and the legislature established it as an independent agency.

The CURB has a five-member volunteer board that is appointed by the Governor. There is one member from each congressional district with the fifth member serving as an at-large appointee. Each member of the board serves a four-year term.

CURB employs a consumer counsel, two supporting attorneys, two technical positions, and two administrative staff.³

Nebraska

Nebraska is unique in that the state privately sources its consumer advocacy duties. Nebraska statutes authorize the States Public Service Commission to outsource its consumer counsel position. Nebraska's status as a public power electricity state means that electricity is not regulated by the PSC. The advocate's role only concerns natural gas.

Nebraska is the only state in the nation that's entire electric load is served by publicly owned utilities such as municipal utilities, electric cooperatives, or public power districts. Such entities are not regulated by public service commissions.⁴

The state's consumer advocate is appointed by the executive director of the PSC for a four-year term and is statutorily-required to be an attorney.⁵

North Dakota

North Dakota has no utility consumer advocate; however, The Consumer Protection office of the North Dakota Attorney General investigates consumer fraud cases. The AG and staff are prohibited by law from providing legal services, advice or interpretation to the public. The North Dakota Corporation Commission does include a Consumer Affairs Division that compiles and works to resolve consumer complaints.⁶

³ Kansas Citizens Utility Ratepayer Board, <http://curb.kansas.gov/about.htm>

⁴ Nebraska Public Power District

⁵ MEEA's *Guide to Utility Consumer Advocates in the Midwest*, Midwest Energy Efficiency Alliance

⁶ North Dakota Public Service Commission

TABLE 1. STATE ADVOCACY STAFF STRUCTURES

Consumer Representative	Affiliation	Enabling Statute	Forums	Interests Represented	Commission appeal authority
Alabama Attorney General's Office-General Civil Division Utilities Section	Attorney General's Office	Code of Alabama §36-15-1 et seq. (statutory authority for AG)	Public Service Commission and Courts	General public & ratepayers	Yes
Alaska Public Advocacy Section	Independent agency; governor appoints counsel w/ the advice & consent of either house of the general assembly	A.S. §42.04.150	Public Service Commission hearings at the direction of the PSC chairman	N/A	No
Arizona Residential Utility Consumer Office	Independent agency; governor appoints the director of the office	A.R.S. 40- 461 et seq.	Public Service Commission hearings	Residential utility customers	Yes
Arkansas Consumer Utilities Rate Advocacy Division	Independent Agency	AC §23-4- 301 et seq	Public Service Commission, Courts, and other agencies	All classes of state utility ratepayers	Yes
California Public Utilities Commission Office of Ratepayer Advocate	Division of the Public Utilities Commission; director appointed by the governor w/ advice & consent of the senate; commission assigns personnel to the division	Cal. Codes §309.5	Public Service Commission	Public utility ratepayers	no
Colorado Office of Consumer Counsel	Independent agency; legal representation	C.R.S. §40- 6.5- 101 et seq.	Public Service Commission,	Residential, small business, and	Yes

	through the dept. of law; 11-member board appointed by the governor gives policy guidance to the OCC		federal agencies, and courts	agricultural customer classes	
Connecticut Office of Consumer Counsel	Independent agency; governor appoints counsel w/ the advice & consent of either house of the general assembly	General Statutes of Connecticut §16-2a	All state and federal administrative and judicial forums	Utility consumer interests	Yes
Delaware Division of the Public Advocate	Independent agency; public advocate is appointed by the governor with the advice and consent of the majority of the senate	29 Del. C. §8808	Public Service Commission, courts, and federal agencies	Residential and small business ratepayers	Yes
Florida Public Counsel	Independent agency w/n the legislative branch; counsel appointed by the joint legislative auditing committee	Fla. Statutes §350.061	Federal and state agencies, courts	Provides legal representation for citizens	Yes
Georgia Consumers' Utilities Counsel	Independent agency w/n the governor's office of consumer affairs, which appoints the director	GC §46-10- 1, et seq.	Federal and state courts and agencies	Appears on behalf of utility consumers	Yes
Hawaii Division of Consumer Advocacy	Independent agency; director of commerce & consumer affairs is the consumer	H.R.S. §269-51	Federal and state agencies	All utility consumers	Yes

	advocate; the responsibilities of consumer advocacy are distinct from those of the commission				
Idaho Public Service Commission	No independent consumer advocate; complaints vs. utilities may be brought by the commission or by any person	N/A	N/A	N/A	N/A
Public Utilities Bureau, Office of the Illinois Attorney General	Division of the Attorney General's Office	AG's office authorized by Article V, Section 1 of the Illinois Constitution; established 1818	Public Service Commission	Consumer Interests	Yes
Illinois Citizens Utility Board	Independent nonprofit public body corporate and politic; any consumer who submits a membership form & dues is a member; the board is managed via elected directors	220 ILCS 10	Illinois Commerce Commission, FERC, FCC and courts	Residential utility customers	Yes
Indiana Office of the Utility Consumer Counselor	Independent agency; governor appoints the counsel and approves staff w/ the budget agency; governor also appoints a 10-member advisory board; and may	IC 8-1-1.1 et seq.	Federal and State agencies and courts	All ratepayers, consumers and the public	Yes

	appoint a deputy consumer counsel for Washington affairs				
Iowa Consumer Advocate	Independent agency w/n the dept. of justice; the attorney general appoints an attorney as consumer advocate, subject to confirmation by the senate; administrative support may be provided by the dept. of commerce	Iowa Code §475A.1 et seq.	Iowa Utilities Board, federal and state agencies and courts	Consumers before the commission	Yes
Kansas Citizens' Utility Ratepayer Board	Independent agency w/n the corporation commission; the governor appoints the 5 members of the board; the board employs an attorney as consumer counsel; the commission provides technical & clerical staff	Kansas Statutes §66-1222 et seq	State Corporation Commission	Residential and small business ratepayers	Yes
Kentucky Office of Rate Intervention	w/n the division consumer protection, office of the attorney general	KRS §367.150	Ratemaking agencies	Consumer interests	Yes
Louisiana Public Service Commission	No independent consumer advocate; consumer issues are handled by the	N/A	N/A	N/A	N/A

	commission, which has an obligation pursuant to LRS §1176 to investigate the reasonableness of rates				
Maine Public Advocate Office	Independent agency; public advocate appointed by the governor, subject to review by the legislature; the public advocate is not subject to the supervision or control of the commission; AG retains authority to intervene or appeal	35-A M.R.S.A. §1702 et seq.	Public Service Commission, state and federal agencies, and courts	Consumer interests	Yes
Maryland Office of Peoples' Counsel	Independent agency; governor appoints the counsel w/ the advice & consent of the senate	Maryland Code §2- 204 et seq.	Public Service Commission, Federal and State Agencies	Residential and noncommercial ratepayers	Yes
Massachusetts Attorney General's Office-Utilities Division	Division w/n the office of the attorney general	M.G.L. c. 12, §11E	Administrative & court proceedings, and in informal complaint mediation/ negotiation	Consumer Interests	Yes
Michigan Department of Attorney General	Office of the attorney general; intervenes on behalf of consumers in cooperation w/	MCL §460.61	State and federal administrative and judicial hearings	Consumer interests	Yes

	the utility consumer participation board (w/n dept. of commerce); the board may not act directly in the interest of consumers, only via managing funds for the AG's intervention				
Michigan Utility Consumer Participation Board	Independent board; Five members appointed by the governor; under the department of licensing and regulatory affairs	Created by PA 304 of 1982; activities governed by §MCL460.6l and MCL460.6m of the Michigan Compiled Laws	Public Service Commission	Public Interest	Yes
Minnesota Office of the Attorney General Consumer Protection Division	Division w/n the attorney general's office	Minn. Stat. §8.33	Public Service Commission, federal proceedings, & courts	Consumer and Small Business interests	Yes
Mississippi Public Utilities Staff	Independent agency; deals with many consumer issues, but because of the other interests it represents, does not advocate for consumers	M.C. §77.2.1 et seq.	N/A	N/A	N/A
Missouri Office of the Public Counsel	Independent agency w/n the Department of Economic Development; structurally separate w/ its	M.R.S. §386.710	Public Service Commission and courts	Public interest in Commission proceedings	Yes

	own budget & staff; counsel appointed by the director of the dept. of econ. development				
Montana Consumer Counsel	Independent office w/n the legislative branch; counsel appointed by the legislative consumer committee	Art XIII, § 2 1972 Montana Constitution; M.C.A. 5- 15-201; M.C.A. 69— 221 et seq.	Public Service Commission proceedings, appropriate federal and state courts and agencies	Consumer interests	Yes
Nebraska Public Service Commission	Private firm; appointed by the Nebraska Public Service Commission; statutorily required to be an attorney	Nebraska Rev. Statute 66-1830	Public Service Commission	Advocate's role only concerns Natural Gas	Yes
Nevada Utilities Consumer Advocate	w/n the Nevada attorney general's office, bureau of consumer protection; consumer advocate is a deputy AG	NRS 228.300 et seq	Public Service Commission, agencies, and courts	Residential and small business consumers	Yes
New Hampshire Office of the Consumer Advocate	Independent agency attached to the public utilities commission; the advocate is appointed by the governor	NHS §363:28	Agencies and courts	Residential utility customers	Yes
New Jersey Division of Ratepayer Advocate	Independent agency; the director is appointed by the governor	N.J.P.S. 48:2-21.24	Public Service Commission and courts	Consumer Interests	Yes

New Mexico Attorney General Consumer Protection Division	W/N the office of the attorney general	NMSA §8- 5-1 et seq	Public Service Commission, New Mexico Supreme Courts, FERC and FCC	Residential and small business customers	Yes
New York Consumer Protection Board	Independent agency w/n the state executive dept.; the board consists of the chairman of the public service commission & other executive agency heads; the director of the board is appointed by the governor; the AG coordinates the enforcement powers of her office w/ that of the board	NYSCL §550 et seq.	Public Service Commission, Federal, State, and Local Agencies	Utility Customers	Yes
North Carolina Utilities Unit, Consumer Protection Division, Office of the Attorney General	Office of the attorney general; the AG is elected; the assistant AGs are appointed by the AG	NCGS §62-20	State and federal courts and agencies	Consumer Interests	Yes
North Dakota Public Service Commission	No independent consumer advocate; commission handles consumer complaints and may bring actions vs. utilities	N/A	N/A	N/A	N/A

Ohio Consumers' Counsel	Independent agency; the AG w/ the advice & consent of the senate appoints the 9 members of the consumers' counsel governing board, which appoints the counsel	ORC §4911 et seq.	Public Service Commission, State and Federal courts and agencies	Residential Consumers	Yes
Oklahoma Attorney General, Public Utility Unit	Division of the Attorney General's Office	Oklahoma Statutes Title 74 §18b	Courts and agencies	Consumer interests	Yes
Oregon Citizens' Utility Board	Independent nonprofit public corporation; each member is entitled to vote for the board of governors; the board manages the CUB, and may delegate authority to an executive committee of at least 5 members	ORS §774.010 et seq.	Legislative, administrative, and Judicial bodies	Utility customers	Yes
Pennsylvania Office of Consumer Advocate	Independent office w/n the PA office of the attorney general; the consumer advocate is appointed by the AG w/ the approval of the governor; the AG appoints assistants & other staff	71 P.S. §309-1 et seq.	Public Service Commission, federal agencies, and courts	Consumer Interests	Yes
Rhode Island Division of Public	No independent consumer	N/A	N/A	N/A	No

Utilities and Carriers	representative; complaints are handled by the consumer section of the commission				
South Carolina Dept. of Consumer Affairs Consumer Advocacy Division	Independent agency; the advocate may be the administrator of the dept. of consumer affairs or may be appointed by the administrator	S.C. Code Ann. §37- 6-601 et seq.	Public Service Commission, FERC, FCC, and the courts	Provides legal representation for the consumer interest; any proceedings must be initiated on behalf of the public at large	Yes
South Dakota Public Utilities Commission, Complaints and Consumer Affairs	No independent consumer representative; the commission handles consumer complaints & rate hearings; persons may intervene but are not given party status	N/A	N/A	N/A	No
Tennessee Office of the Attorney General, Consumer Advocate Division	Office of the attorney general; the AG is appointed by the justices of the state supreme court	T.C. §65- 4-118	Public Service Commission, all administrative, legislative, or judicial bodies	Consumer Interests	Yes
Texas Office of Public Utility Counsel	Independent agency; the counselor is appointed by the governor w/ advice & consent of the senate; N.B.—the office is subject to the Texas sunshine act	Tex. Util. Code Ann. §13.001 et seq.	Judicial and administrative hearings	Residential Consumers	Yes

Utah Committee of Consumer Services	Independent agency; committee has 6 members appointed by the governor w/ the advice & consent of the senate, w/ a full staff to assist the committee; the AG appoints at least 1 attorney to represent the committee	Utah Code Ann. §54-10-1 et seq	Public Service Commission, and courts	Residential, small business, and agricultural customers	Yes
Vermont Department of Public Service	Independent agency w/n the dept. of public service, which consists of the commissioner of public service, a director for regulated utility planning, a director for public advocacy, & a director for energy efficiency; the commissioner is appointed by the governor w/ the advice & consent of the senate; the director for public advocacy is appointed by the commissioner	30 VSA §1	Public Service Commission, Courts, and Federal Agencies	Consumer Interests	Yes
Virginia Office of the Attorney General, Insurance & Utilities Section	Division of the Attorney General's office	Code of Virginia §56- 592	Governmental commissions, agencies, and departments	Interests of utilities & insurance consumers; upon referral from the commission, the	Yes

				AG may bring an action vs. a utility	
Washington Office of the Attorney General, Public Counsel Section	Division of the Attorney General's office	RCW §§43.10 et seq.; 80.10.100; 80.40.510	Public Service Commission and courts	Consumer interests	Yes
West Virginia Consumer Advocate Division	Independent & administratively separate division of the public utilities commission (separation); the commission appoints a director	Established by WV PSC General Order No. 195.2, as required by W.V.C. §24-1-1(f)(2) & (3)	Public Service Commission	Residential Customers	Yes
Wisconsin Citizens' Utility Board	Independent nonprofit public body corporate & politic; any resident who has contributed \$3-\$100 in membership fees annually is a member; the corporation is managed by an elected board	Wis. Stats. 199.01 et seq.	Any proceeding that affects constituency	Residential, small business, and agricultural ratepayers	Yes
Wyoming Office of Consumer Advocate	Independent division w/n the public service commission; the administrator is appointed by the governor; the employees of the OCA are not supervised or directed by the commission	Wyoming Statutes §37-2-401 et seq.	Public Service Commission	All classes of utility customers	Yes

Sources: National Regulatory Research Institute and NARUC